

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION II

CA 06-1094

TERRY KING, CAROLYN KING AND
LESLIE KING STRIPLING

March 21, 2007

APPELLANTS

APPEAL FROM THE SEVIER COUNTY
CIRCUIT COURT
[NO. JV-06-51-1]

V.

ARKANSAS DEPARTMENT OF
HEALTH AND HUMAN SERVICES

HONORABLE TED C. CAPEHEART,
JUDGE

AFFIRMED

APPELLEE

SARAH J. HEFFLEY, Judge

This is an appeal from an adjudication order declaring CK and JS to be dependent-neglected children. The question under review is whether the trial court's decision is clearly against the preponderance of the evidence. We hold that it is not and affirm.

Appellants Terry and Carolyn King are the parents of CK. Appellant Leslie Stripling, the Kings' daughter, is the mother of JS. Appellee, DHHS, took both children into emergency custody on April 19, 2006, based on allegations of environmental and educational neglect. The cases were consolidated because Terry, Carolyn, Leslie, and the children resided together as one family. Probable cause was found, and the children were

placed in the custody of Tom and Frances King, Terry's father and his wife. The adjudication hearing was held on June 1, 2006.

At the hearing, Pat Washington, an assessment investigator with DHHS, testified that the children, ages eleven and twelve, had been living with the elder Kings since February and had been attending school in Lockesburg. It was her understanding from the children that they had not been in school prior to that time and that they traveled around quite a bit. Tom King told her that appellants and the children had lived off and on for several years in his old, abandoned home. Ms. King went by this home and saw that it was falling apart. Windows were broken out, and the porch was missing boards and a roof. She peeked inside the house but could not say that anyone was living there.

Marlow King, Terry's half-brother, testified that Terry and the family started living in their father's run-down home in January 2006. The children remained there until they went to live with the elder Kings, and he testified that the children also lived there for four days before DHHS took them into custody. The house had no running water or utilities; there were holes in the floor; and the roof leaked. Marlow had called the child-abuse hotline because the children were sleeping on the floor in "horrible conditions." He said that Terry and the family had been scrutinized by DHHS before, but that Terry had always left the state when being investigated. He testified that Terry had always "moved around." He had known Terry and the family to live in San Diego, Las Vegas, Houston, and Texarkana. At the time of the hearing, Terry, Carolyn and Leslie were living in Houston.

Marlow recalled other times when Terry had dropped the children off with the Kings, only to retrieve them later. He said that the children had been in special education classes while attending school in Lockesburg, and that they stayed with the Kings until the day Terry took the children out of school. He said his father dropped off the children's clothing at the old home place so that they would have something to wear.

Tom King testified that Terry and the family came to Arkansas from San Francisco, California, sometime before Christmas 2005 and moved into his former home, as they had done before over the years. He said the children had come to live with him in January because he could not stand to see them suffer in the cold. He described the old house as not being fit for habitation. He had never known Terry to work, and he said Terry had made no repairs to the house. Terry paid no rent and had borrowed money from Tom to buy cigarettes. He felt that the children's safety was compromised because Carolyn and Leslie were mentally ill, for which they each had been hospitalized on numerous occasions.

Tony Arbor was the family's caseworker. She said appellants traveled to the probable-cause hearing from Oklahoma and were presently living in Houston, although she had no verification of an address. They had visited the children one time since they were taken into custody, but appellants had maintained telephone contact with the children once each week. She recommended that each appellant undergo a psychological evaluation so that a case plan could be formulated. She also recommended parenting classes but said it

would be difficult to provide services if appellants lived out of state.

Erica King, Terry and Carolyn's twenty-nine-year-old daughter, testified that she had a bachelor's degree and was a payroll clerk. She and her siblings were raised by her parents who "moved around a lot." She attended three high schools, three junior high schools, and several elementary schools. They had lived in homeless shelters and had at times depended on others for food and clothing, but she insisted that she and her siblings were well cared-for. Erica believed that appellants were capable of taking care of the children, if they were provided services. She had found appellants a rental home in Houston and had made arrangements for medical treatment for Carolyn and Leslie. She said Terry did not have a stable job in that he was a house painter and song writer. She testified that Terry's primary role was being a care giver to Carolyn.

Terry testified that he and the family lived in San Francisco from August to December 2005. Prior to that, they had lived in Oklahoma for six months. Before Oklahoma, they lived in Arkansas in his father's old house. They also spent time in Houston. Terry acknowledged that the family had been investigated on previous occasions. He said it "seems like every where we go somebody calls ... and makes some kind of weird complaint." Terry testified that they had previously moved from Arkansas to Oklahoma "because of the harassment." He testified that he, Carolyn and Leslie had moved to Houston after the children were removed from their custody. A lease agreement was introduced into evidence which indicated that they had entered into a month-to-month lease

of a three-bedroom, one-bath brick home at the rate of \$700 a month. Terry said that he painted houses on a seasonal basis, writes songs, and plays music for a living. He testified that he earned \$25,250 playing music one week in March 2005. In addition, both Carolyn and Leslie received SSI benefits.

Terry said they lived in a homeless shelter in San Francisco and that the children were enrolled in school there. A letter from the school in San Francisco was introduced into evidence documenting that the children attended school from September through December 2005, and that the Lockesburg school had requested the children's records in mid February 2006. Terry testified that the children were in fifth grade in San Francisco where they were considered partially disabled. He said, in Arkansas, they were in the fourth grade and considered mildly retarded, but he did not agree with that assessment.

Terry testified that in December 2006 they were traveling home to Arkansas for Christmas by bus when Leslie took ill in Oklahoma City, where they stayed all of January. He said he brought the children to his father in February, and that he, Carolyn and Leslie stayed in the old home and hotels to be near the children. Terry testified, "But then it blew up when I went to the school on Good Friday and checked them out of school." He said he took the children to Wal-Mart, and a "couple of hours after we got home, he [Tom King] came up and threw their clothes and toys out in the yard." He claimed that Erica came down for the Easter weekend and that they all went to the lake and stayed at a hotel.

Leslie was called as a witness, but her testimony was interrupted with an objection

that she had been declared incompetent and thus was not qualified to testify. The parties thereafter stipulated that Leslie was incompetent, and she did not testify.

A dependent-neglected juvenile is one who is at substantial risk of serious harm as a result of abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness. Ark. Code Ann. § 9-27-303(18)(A) (Supp. 2005). The definition of “neglect” includes those acts or omissions of a parent which constitute the failure or refusal to provide the necessary food, clothing, shelter, and education required by law. Ark. Code Ann. § 9-27-303(36)(a)(ii).

The juvenile code requires proof by a preponderance of the evidence in dependency-neglect proceedings. Ark. Code Ann. § 9-27-325(h)(2)(B) (Supp. 2005). We review a trial court’s findings de novo and will not set them aside unless they are clearly erroneous, giving due regard to the trial court’s opportunity to judge the credibility of the witnesses. *Brewer v. Arkansas Dep’t of Human Services*, 71 Ark. App. 364, 43 S.W.3d 196 (2001). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Moiser v. Arkansas Dep’t of Human Services*, 95 Ark. App. 32, ___ S.W.3d ___ (2006).

Appellants contend on appeal that there is insufficient evidence to show that the children suffered from either environmental or educational neglect. We disagree. The evidence showed that the family stayed from time to time in Mr. King’s abandoned home,

which was in shambles. Terry's testimony revealed that he, Carolyn and Leslie had been living there while the children were staying with Mr. King. Terry's testimony also established that he took the children to this house after removing them from school and a trip to Wal-Mart. It was there that the children's clothing was received. On this evidence, the trial court could find that the family intended to remain in this house indefinitely and that it was not a safe place for them to live.

Although only one ground is necessary to render a finding of dependency neglect, our review of the record also reveals that the children were not in school from January to mid February 2006, due in part to the family's nomadic lifestyle. The children were shown to have special needs, and they were demoted one grade upon entering school in Arkansas. On this record, we are not able to say that the trial court's finding of educational neglect is clearly against the preponderance of the evidence.

On a final note, DHHS has asked us to consider the psychological evaluations of Terry and Carolyn that were included in the record on appeal. These evaluations were conducted after the adjudication hearing and thus played no part in the trial court's decision. Because the trial court did not consider the evaluations in making its decision, neither do we.

Affirmed.

VAUGHT and MILLER, JJ., agree.